

SIMPLIFYING THE FILLING OF REFEREE IN BANKRUPTCY VACANCIES

JULY 21, 1959.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4340]

The Committee on the Judiciary, to which was referred the bill (H.R. 4340) to amend sections 43 and 34 of the Bankruptcy Act (11 U.S.C. 71, 62) to simplify the filling of referee vacancies, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

On page 1 in lines 5 and 6 strike the words "on the existing basis" and insert in lieu thereof the words "without any changes in the salary or arrangements".

On page 1 in line 8 strike the word "existing".

On page 2 in line 2 after the word "amended" insert the words "by striking the word 'senior' and inserting in the place thereof the word 'chief' and".

PURPOSE OF THE AMENDMENTS

The first two amendments are clarifying changes.

The purpose of the third amendment is to conform subsection 34(a) of the Bankruptcy Act with subsection (a) of section 136 of title 28 of the U.S. Code.

The proposed amendments have been recommended by the Administrative Office of the U.S. Courts.

PURPOSE

The purpose of the proposed legislation, as amended, is to simplify the filling of vacancies in the office of referee in bankruptcy.

STATEMENT

The proposed legislation has been introduced at the request of the Judicial Conference of the United States.

The Bankruptcy Act now provides that when a vacancy occurs in the office of a referee, the clerk of the district court shall notify the Director of the Administrative Office of the U.S. Courts, and that the Director shall recommend to the district judges, the councils, and the Judicial Conference of the United States whether a new appointment should be made, and no such appointment shall be made until authorized by the Conference.

The Judicial Conference of the United States is now composed of the Chief Justice of the United States, as Chairman, the chief judges of the 11 judicial circuits, the chief judge of the Court of Claims, and a district judge of each judicial circuit.

The proposed legislation would permit a vacancy in the office of a referee to be filled, without any changes in the salary or arrangements, when recommended by the Director, the district judge or judges, and the circuit council that the office be continued, without recommendation to the Conference or its approval.

The Judicial Conference of the United States at its meeting in September 1958, upon the recommendation of its Committee on Bankruptcy Administration, approved this proposed legislation.

Under the present law if a vacancy arises when the Conference is not in session it is necessary to poll all the members by mail before filling a referee vacancy. This often takes from 6 to 12 weeks and during that time a substantial backlog of cases may accumulate in the referee's office.

The committee believes that the proposed legislation is meritorious and recommends it favorably.

Attached and made a part of this report is a letter dated January 28, 1959, from the Administrative Office of the U.S. Courts, and (2) a letter dated May 26, 1959, from the Administrative Office of the U.S. Courts.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 28, 1959.

HON. SAM RAYBURN,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith, on behalf of the Judicial Conference of the United States, a bill to amend subdivision b of section 43 of the Bankruptcy Act (11 U.S.C. 71b) and subdivision a of section 34 of the Bankruptcy Act (11 U.S.C. 62a) to simplify the filling of vacancies in the office of referees in bankruptcy.

There is attached an explanation of these proposals. Representatives of this office will be glad to appear before the committee and to provide any further information which may be desired concerning the bill.

Respectfully,

WARREN OLNEY III, *Director.*

EXPLANATION OF PROPOSED BILL TO AMEND SECTIONS 43B AND 34A OF THE BANKRUPTCY ACT (11 U.S.C. SECS. 71 AND 62) TO SIMPLIFY THE FILLING OF REFEREE IN BANKRUPTCY VACANCIES

Section 43a of the Bankruptcy Act, in part, provides that when a vacancy occurs in the office of a referee, the clerk of the district court shall notify the Director of the Administrative Office of the U.S. Courts.

Section 43b of the Bankruptcy Act provides that when the office of the referee is vacant, the Director shall recommend to the district judges, the councils and the Judicial Conference of the United States whether a new appointment should be made, and no such appointment shall be made until authorized by the Conference.

As presently constituted, the Judicial Conference of the United States is composed of the Chief Justice of the United States, as Chairman, the chief judges of the 11 judicial circuits, the chief judge of the Court of Claims, and a district judge of each judicial circuit (28 U.S.C. 331). The Court of Claims was authorized to be represented on the Conference by the act of July 9, 1956, and the district was authorized to be represented by the act of August 28, 1957.

The amendments proposed by the bill to section 43b of the Bankruptcy Act and section 34a would permit a vacancy in the office of a referee to be filled when recommended by the Director, the district judge or judges, and the circuit council that the office be continued, on the existing basis, without recommendation to the Conference or its approval.

The Judicial Conference of the United States at its meeting in September 1958, upon the recommendation of its Committee on Bankruptcy Administration, approved this proposed legislation.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., May 26, 1959.

MR. FRANCIS C. ROSENBERGER,
Member of the Staff, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. ROSENBERGER: The purpose of this letter is to confirm my telephone conversation with you on May 22, 1959 concerning the bill, H.R. 4340, to amend sections 43 and 34 of the Bankruptcy Act (11 U.S.C. 71, 62) to simplify the filling of referee vacancies, which is pending before the Senate Committee on the Judiciary for consideration and to ask that certain clarifying and conforming changes be made in the bill.

Under the Bankruptcy Act, the Judicial Conference of the United States may from time to time, in the light of the recommendations of the councils, made after advising with the judges of their respective circuits and the Director, authorize the filling of vacant positions of referees, change the salary of referees as well as other arrangements for the referees such as the number of part-time or full-time referees, the territory to be served, the regular place of office or the places of holding court.

Section 43a of the Bankruptcy Act, in part, provides that when a vacancy occurs in the office of a referee, the clerk of the district court shall notify the Director of the Administrative Office of the U.S. Courts.

Section 43b of the Bankruptcy Act provides that when the office of the referee is vacant, the Director shall recommend to the district judges, the councils and the Judicial Conference of the United States whether a new appointment should be made, and no such appointment shall be made until authorized by the Conference.

As presently constituted, the Judicial Conference of the United States is composed of the Chief Justice of the United States, as Chairman, the chief judges of the 11 judicial circuits, the chief judge of the Court of Claims and a district judge of each judicial circuit (28 U.S.C. 331).

The amendments proposed by the bill as it passed the House would permit a vacancy in the office of a referee to be filled when recommended by the Director, the district judge or judges and the circuit council that the office be continued, on the existing basis; i.e., at the salary and other arrangements in effect at the time of the vacancy, without recommendation to the Conference or its approval. It would accomplish this by amending subdivision b of section 43 of the Bankruptcy Act and subdivision a of section 34 of the Bankruptcy Act.

It is suggested that section 1 of the bill, H.R. 4340, as it passed the House be amended by striking the words "on the existing basis" appearing on page 1, in lines 5 and 6 and inserting in lieu thereof the words "without any changes in the salary or arrangements" and by striking the word "existing" on page 1, line 8. These are clarifying changes.

It is also suggested that section 2 of the bill be amended by inserting after the word "amended" on page 2, line 2 the words "by striking the word 'senior' and inserting in the place thereof the word 'chief' and". The purpose of this change is to conform subsection 34(a) of the Bankruptcy Act with subsection (a) of section 136 of title 28 of the United States Code as amended by Public Law 85-985 which now in part, provides that in each district having more than one judge the district judge in regular active service who is senior in commission and under 70 years of age shall be the chief judge of the district court.

Attached is a copy of H.R. 4340 with sections 1 and 2 thereof amended in accordance with the amendments suggested herein.

H.R. 4340 was introduced at the request of the Administrative Office on behalf of the Judicial Conference of the United States. The Conference approved the measure at its September 1958 meeting.

With kind regards, I am

Sincerely yours,

EDWIN L. COVEY,
Chief of Bankruptcy.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

SECTION 43 OF THE BANKRUPTCY ACT

(11 U.S.C. 71)

“(a) * * *

“(b) [Whenever the office of referee is vacant, the Director shall recommend to the district judges, the councils and the conference whether a new appointment should be made, and no such appointment shall be made until authorized by the conference.] *A vacancy in the office of referee may be filled without any changes in the salary or arrangements upon the recommendations of the Director, the district judge or judges and the circuit council that the office be so continued. If a change in the salary or arrangements is recommended by the Director, the district judge or judges or the circuit council, a vacancy shall not be filled until the conference has acted thereon.*”

SECTION 34 OF THE BANKRUPTCY ACT

(11 U.S.C. 62)

“§ 34. Appointment, reappointment, and removal of referees—(a) Appointment.

“* * * Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies providing the filling of the vacancy has been authorized [by the Conference] as provided in subdivision b of Section 43 of this Act.”

SECTION 62 OF THE BANKRUPTCY ACT

(11 U.S.C. 62)

§ 62. Appointment, reappointment, and removal of referees—(a) Appointment.

The judges of the several courts of bankruptcy shall appoint referees. Where there is more than one judge of a court of bankruptcy, or where the territory to be served by a referee includes territory in more than one judicial district, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such court or of the courts of bankruptcy of such judicial districts, and where there is no such concurrence, then by the [senior] *chief* judge. Except as otherwise provided in section 65 of this title, each appointment and reappointment shall be for a term of six years. Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized [by the Conference] as provided in subdivision (b) of section 71 of this title.”



